

**IN THE SUPREME COURT OF THE STATE OF ALASKA**

Kelly Tshibaka, in her Official )  
Capacity as Commissioner of the )  
Department of Administration, )

Appellant, )

v. )

The Retired Public Employees of )  
Alaska, Inc., )

Appellee. )

Supreme Court No. S-17577

Trial Court Case No. 3AN-16-04537 CI

**SECOND UPDATED STATEMENT OF POINTS ON APPEAL**

Pursuant to this Court's Order dated March 23, 2020 granting Appellant's Second Motion to Amend Points on Appeal, Commissioner Tshibaka provides this complete statement of points on appeal:

1. The superior court erred in concluding that the diminishment clause of article XII, section 7 of the Alaska Constitution constrains the State's ability to make changes to its optional dental-visual-audio coverage plan for retirees.
2. The superior court erred in finding that changes made by the State in 2014 to its retiree dental plan constituted a diminishment of benefits in violation of article XII, section 7 of the Alaska Constitution.
3. The superior court erred by discounting as "biased" the testimony of the State's expert witness—the only actuarial analysis presented by either party—on the basis that the witness was employed by and aligned with the State.

4. The superior court erred by failing to account for the cost of premiums paid by retirees in its assessment of whether the State's dental plan was subject to diminishment clause analysis and/or in fact diminished because of the changes made by the State in 2014.

5. The superior court erred by awarding attorney's fees and costs to RPEA as a prevailing party and constitutional litigant.

6. The superior court erred and exceeded its authority in granting RPEA additional relief in November 2019, changing the default dental plan for retirees days before scheduled close of open enrollment.

7. The superior court erred and exceeded its authority by granting RPEA the right to a "complete retrospective review of claims denied under the 2014 plan that would have been granted had the 2013 plan remained in effect."

8. The superior court erred and exceeded its authority in its February 19, 2020 order requiring DRB to perform a retrospective claims analysis for the purpose of awarding non-party retirees damages that RPEA did not request in the Complaint, did not request be included in the judgment, and that could not be awarded to RPEA in any event even if they had been pled and litigated before final judgment.

DATED June 18, 2020.

KEVIN G. CLARKSON  
ATTORNEY GENERAL

By: /s/ Katherine Demarest  
Katherine Demarest  
Assistant Attorney General  
Alaska Bar No. 1011074

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# CERTIFICATE OF SERVICE

I hereby certify, that on this date, a true and correct copy of the **Second Updated**

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